

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Revised Regulations Governing Small Power                      Docket No. RM05-36-000  
Production and Cogeneration Facilities

ORDER ON CLARIFICATION

(Issued February 10, 2006)

1.     On February 2, 2006, the Commission issued Order No. 671,<sup>1</sup> which revised regulations governing small power production and cogeneration facilities. This order clarifies that the Commission will waive the 60-day prior notice requirement of section 205 of the Federal Power Act (FPA)<sup>2</sup> for electric energy sales that, pursuant to Order No. 671's elimination of certain regulatory exemptions, will now be subject to section 205 filings, provided that such section 205 filings are made prior to Order No. 671's effective date.

**Background**

2.     Order No. 671, among other things, eliminated certain exemptions from regulation that were previously provided to qualifying facilities (QFs) under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA),<sup>3</sup> including partial elimination

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<sup>1</sup> Revised Regulations Governing Cogeneration and Small Power Production, Order No. 671, 114 FERC ¶ 61,102 (2006).

<sup>2</sup> 16 U.S.C. 824 et seq. (2000).

<sup>3</sup> 16 U.S.C. 824a-3 (2000).

of the exemption from sections 205 and 206 of the FPA.<sup>4</sup> Although Order No. 671 states that it will become effective 30 days after its publication in the Federal Register, the Commission did not specify when it expected QFs to make the section 205 filings now required as a result of the change to its regulations, i.e., the partial elimination of the exemption from sections 205 and 206 of the FPA.

### **Discussion**

3. Elimination of the exemption from sections 205 and 206 of the FPA for certain QF sales<sup>5</sup> will require some QFs that were previously exempt from section 205 of the FPA to make section 205 filings. Section 205(d) of the FPA specifies that, unless the Commission otherwise allows, a public utility must submit its proposed rates at least 60 days prior to their proposed effective date.<sup>6</sup> Thus, the earliest date that proposed rates may become effective, absent waiver of the prior notice requirement, is 60 days after the rates are filed. However, Order No. 671 stated that the regulations adopted therein, including the partial elimination of the exemption from sections 205 and 206 of the FPA, would become effective 30 days after publication in the Federal Register, presenting the possibility that some QFs would not have the required section 205 authority to make

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<sup>4</sup> 16 U.S.C. 824d, 824e (2000).

<sup>5</sup> In Order No. 671, the Commission eliminated the section 205 exemption for some, but not all, QF electric energy sales. In this regard, Order No. 671 provides that sales of energy or capacity made by qualifying facilities 20 MW or smaller, or made pursuant to a contract executed on or before the effective date of Order No. 671, or made pursuant to a state regulatory authority's implementation of section 210 of PURPA remain exempt from sections 205 and 206 of the FPA. Order No. 671 at P 92-103.

<sup>6</sup> 16 U.S.C. § 824d(d) (2000).

electric energy sales when Order No. 671 takes effect. We therefore clarify that we will grant waiver of the 60-day prior notice requirement to QFs that make the required section 205 filings prior to the effective date of Order No. 671 and permit Commission-accepted rates to become effective on the effective date of Order No. 671.<sup>7</sup>

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup> As to QF section 205 filings made prior to the effective date of Order No. 671, the Commission may accept, conditionally accept as modified, suspend for a nominal period and make effective subject to refund, and/or set for trial-type evidentiary hearing such filings – just as with any section 205 filing.

Whether to waive the 60-day prior notice requirement for section 205 filings made on or after the effective date of Order No. 671 will be addressed case-by-case.